IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.2151 OF 1996

General Kamgar Sangh, a Trade Union registered under the Trade Unions Act, 1926 having its office at Ganesh Maidan, Golibar, Ghatkopar Bombay 400 086. .. Petitioner

Versus

1) M/s.Kaka John Hoe Flare Toys India Pvt. Ltd., A company incorporated in India under the Indian Companies Act, 1956 having its office at Eshwarbhai Patil Road, Goregaon (E) Bombay 400 063.

2) Shri S.S.Hirurkar, Member Industrial Court having its office at Arun Chambers, Tardeo Bombay 400 034. .. Respondents

Mr.Avinash Fatangare i/b.K.S.Bapat for the Petitioner.

None present for Respondent No.1.

Respondent No.2 formal party.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 3RD AUGUST 2004

ORAL JUDGMENT :

. This Writ Petition challenges the Award dated 27th September 1995 of the Industrial Tribunal, Bombay in Reference (IT) No.93 of 1993 which has rejected the Reference made to it for adjudication of the dispute between the first Respondent Company and its workmen. According to the Industrial Tribunal, the 13 workmen

concerned having accepted the voluntary retirement scheme floated by the employer, there was no termination of service of these workmen and, therefore, the question of paying retrenchment compensation and following the provisions of Section 25F and 25G of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") does not arise.

2. The first Respondent Company was engaged in the manufacture of battery caps. According to it, the work was reduced as other companies from which it obtained orders had reduced their work. Therefore, the first Respondent Company was not able to provide work to the entire workforce employed by it. It appears that on 22nd January 1988 there was a discussion on a charter of demands which was raised by the Union known as Sarva Shramik Sangh. It appears that this discussion led to the Union agreeing that the workforce should be reduced and a voluntary retirement scheme should be introduced so that the workmen could avail of the same. A notice of voluntary retirement scheme was displayed, according to the Company, and 13 workmen accepted the voluntary retirement scheme, thus ending the relationship between themselves and the Company.

3. Letters accepting the voluntary retirement scheme are dated 23rd January 1988. The workers were

permitted to work till their 22nd February 1988. Legal dues were paid to the workmen including the compensation under the voluntary retirement scheme. The workmen through the Petitioner Union raised an industrial dispute. Since the dispute was not referred for adjudication, the Petitioner filed a Writ Petition and this Court directed that a Reference be made. Accordingly, on 30th November 1993 Reference was made under Section 10(1)(d) of the Act for adjudication of the dispute as to whether the termination of services of the 13 workmen named was legal and justified.

4. The Petitioner contended in its Statement of Claim that the voluntary retirement scheme was not in fact voluntary but compulsory resulting in the termination of service of the 13 workmen by an overt-act of the employer. It contended that no notice dated 22nd January 1988 was displayed calling upon the workmen to accept voluntary retirement. The Petitioner pleaded that the Union, Sarva Shramik Sangh, in collusion with the management had decided to terminate the services of the 13 workmen so that the general demands which were pending could be settled between the parties. It was for this reason that the Union Sarva Shramik Sangh had agreed to reduce the workforce. It was further pleaded that the voluntary retirement was in fact a termination of service which was in contravention of Sections 25F

and 25G of the Act.

5. The first Respondent Company pleaded in its Written Statement that the Reference itself was not maintainable as the Petitioner had filed a Complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. It was further contended that the reduction of work had caused the Company to float the voluntary retirement scheme. The workmen had accepted the same and, therefore, there was no termination in the eyes of law.

6. Evidence of both the parties was led. One of the witnesses of the Union, one M.A.Patil who was working along with the concerned workmen, has stated categorically that no notice of voluntary retirement was displayed by the Company on 22nd January 1988 or on any date in January 1988. The Company examined the Vice President of the Sarva Shramik Sangh as one of its witnesses. He has deposed that an agreement was signed between the employer and the Sangh on 22nd January 1988 and that a notice was displayed regarding introduction of voluntary retirement scheme. He has also stated that the 13 workmen named in the schedule to the Reference order had opted for the voluntary retirement scheme and that junior persons had been retained in service. The

Company's witness has admitted that some persons were recruited after the cessation of employment of the 13 workmen concerned in the Reference.

7. Accordingly, after assessing the evidence on record, the Tribunal has rejected the Reference by coming to the conclusion that written applications were given by the 13 workmen for voluntary retirement and the Company having accepted the same, the cessation of employment of these 13 employees could not be termed as a termination of service but in fact was a case of voluntary retirement. The Tribunal negatived the contention raised by the Company that the Reference was not maintainable as it found that the earlier Complaint filed under Section 28 of the MRTU & PULP Act, 1971 was for a different cause of action and, therefore, the bar under Section 59 did not operate. The Tribunal held that the settlements and documents on record could not be termed as bogus. The Tribunal has not accepted the version of the workmen that they were pressurised into signing letters requesting voluntary retirement. The Tribunal has found that the evidence on record does not lead one to the conclusion that there was any termination of service but it was a clear case of voluntary retirement. Legal dues have been paid under the voluntary retirement scheme to the 13 workmen. The Tribunal has then held that the provisions of Sections

25F and 25G of the Act were not required to be complied since this was not a case of termination of service but a voluntary retirement.

8. Mr.Fatangare for the Petitioner submits that it is highly improbable that the Union would discuss the issue regarding reduction of workmen on a particular date with the employer; the employer would offer a scheme for voluntary retirement persuaded by the Union on the same date; that the scheme would be displayed on that date itself and the workmen would in turn accept the scheme on the same day. According to him, this chain of events is highly improbable and, therefore, should be disregarded. The learned Advocate submits that these facts and circumstances lead one to believe that there was no voluntary retirement scheme at all and the workmen had in fact been pressurised into signing some letters. The learned Advocate submits that on 15th March 1988 settlement was reached between the Sarva Shramik Sangh and the Company which has been signed under Section 2(p) read with Section 18(1) of the Act granting most of the demands contained in the charter of demands which was pending prior to 22nd January 1988. He submits that the Tribunal had not considered the fact that even after the purported acceptance of voluntary retirement, the Company had recruited several persons.

This, according to the learned Advocate, indicates that there was no reduction in work at all and the case put up by the Company was false and mala fide. He submits that the entire conduct of the Company showed that the voluntary retirement scheme was floated only as a ruse to get rid of these 13 workmen.

9. The first Respondent Company has chosen to remain absent though served. As directed by me, the Petitioner has on 16th July 2004 informed the first Respondent Company to remain present in Court as the matter was part-heard. Inspite of this, nobody has remained present on behalf of the Company.

10. The Tribunal while rejecting the Reference has not considered the evidence on record and the circumstances which led to the workmen signing a document purported to be a letter requesting voluntary retirement. The evidence on record indicates that the entire chain of events - discussing the charter of demands, the decision to reduce workmen, the introduction of voluntary retirement scheme, the letters requesting voluntary retirement - has occurred on the same day. As rightly contended on behalf of the Petitioner, this is highly improbable, specially in view of the fact that the other workers were recruited immediately after the workmen concerned were paid

compensation under the voluntary retirement scheme. The workman M.A.Patil has stated that no notice of voluntary retirement was displayed on the notice board. Therefore, the workmen could not have issued letters requesting the management to grant voluntary retirement to them. The Company's witness has also admitted that new recruits were employed by the management after the so-called voluntary retirement of these 13 workmen. If indeed new recruitment had been taken place, the entire case of the Company that it was due to the reduction in work that the voluntary retirement scheme was introduced, is unacceptable. When there was reduction in work, there would be no need to employ new recruits after accepting the voluntary retirement of 13 workmen.

11. In my view, therefore, the entire reasoning of the Tribunal is incorrect and the Award of the Tribunal must be set aside. The cessation of employment was clearly due to the overt act of the employer in terminating the services of the workmen. Sections 25F and 25G of the Act have admittedly not been complied with. Thus the termination of service must be set aside. The workmen would be entitled to reinstatement with continuity of service and full back wages. Any amount received by the workmen from the Company under the so called voluntary retirement scheme shall be adjusted towards the back wages payable.

12. Accordingly, the Award dated 27th September 1995 passed by the Industrial Tribunal, Bombay in Reference (IT) No.93 of 1993 set aside. Writ Petition allowed. Rule made absolute. No order as to costs.